

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

BURLIE QUARTMAN,

Petitioner,

vs.

TIMMERMAN-COOPER, WARDEN,
LONDON CORRECTIONAL INSTITUTION,

Respondent.

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Case No. 3:08cv013

JUDGE WALTER HERBERT RICE

DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE JUDGE (DOC. #6) AND
OVERRULING PETITIONER'S OBJECTIONS THERETO (DOC. #8);
PETITION FOR WRIT OF HABEAS CORPUS DENIED AND DISMISSED;
ANTICIPATED REQUEST FOR CERTIFICATE OF APPEALABILITY AND
MOTION FOR LEAVE TO APPEAL *IN FORMA PAUPERIS* DENIED;
JUDGMENT TO ENTER IN FAVOR OF RESPONDENT AND AGAINST
PETITIONER; TERMINATION ENTRY

Based upon the reasoning and citations of authority set forth in the Report and Recommendations of the United States Magistrate Judge (Doc. #6), as well as upon a thorough *de novo* review of this Court's file and the applicable law, this Court adopts said Report and Recommendations in their entirety. The Petitioner's Objections to said judicial filing (Doc. #8) are overruled. Judgment will be ordered entered in favor of Respondent and against Petitioner herein.

In ruling as aforesaid, this Court makes the following, non-exclusive, observations:

1. This Court agrees with the Magistrate Judge that the state's procedural mechanism, in the abstract, presents the opportunity to raise a fourth amendment claim and, moreover, the presentation of the Petitioner's claim in the state courts was not frustrated because of a failure of that mechanism. Petitioner's failure to demonstrate those two necessary predicates, makes his fourth amendment issue non-cognizable in this federal habeas proceeding.

Given that Petitioner has failed to make a substantial showing of the denial of a constitutional right and, moreover, because reasonable jurists would not disagree with this Court's conclusion herein, Petitioner is denied any requested Certificate of Appealability. Moreover, given that any appeal from this decision would be objectively frivolous, this Court denies Petitioner the right to appeal *in forma pauperis*.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

/s/ Walter Herbert Rice

July 16, 2008

WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

Copies to:

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